In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1134

NORMAN CARL HUG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 12-30) is reported at 329 F.2d 475.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1964. A petition for rehearing was denied on April 20, 1964. The petition for a writ of certiorari was filed on May 20, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner's conviction for perjury before a grand jury should be reversed because petitioner was ordered by the district court to answer certain questions, including the one which he answered falsely, after asserting his privilege against self-incrimination.

2. Whether the evidence is sufficient to support the conviction.

3. Whether it was reversible error for the trial court to allow the government to impeach petitioner by showing that he once submitted an inflated expense account to his labor union.

STATEMENT

After a trial by jury, petitioner was convicted in the United States District Court for the Western District of Kentucky on a one-count indictment charging him with perjury before a grand jury. He was sentenced to imprisonment for one year and a day and was fined $1,000. The court of appeals affirmed the conviction.

In January 1963, a grand jury in the Western District of Kentucky was investigating possible violations of 18 U.S.C. 371 and 1001 and 29 U.S.C. 501(c) and 439(c). During this investigation petitioner, a member of the Teamsters Union, was called to testify concerning his role in conveying certain money from Allen Dorfman, a Teamsters' official in Chicago, to Stoy Decker, a Teamsters' official in Louisville, Kentucky. Petitioner refused to answer several ques-

tions put to him by the grand jury on the ground that the answers would tend to incriminate him. After a hearing, the district court overruled the claim of privilege and ordered petitioner to answer. Thereafter, petitioner was asked the following question by the grand jury: "During the year 1961, did you give or turn over custody of $1,000.00 in cash to Arvel Decker at any place within the limits of the City of Louisville?" Petitioner replied, "No, Sir" (R. 42a, 257a, 276a).[1]

The indictment charged that this answer was false in that petitioner gave $1,000 in cash to Arvel Decker at a parking lot in Louisville on April 12, 1961, after obtaining the money from Allen Dorfman in Chicago earlier the same day (R. 8a-10a).

The government's case rested primarily on the testimony of Arvel Decker. He testified that on April 11, 1961, his brother, Stoy Decker, asked him to meet petitioner the following day to pick up some money (R. 95a). At about mid-day on April 12, Arvel met petitioner at a parking lot in Louisville; petitioner handed Arvel an envelope containing $1,000 (R. 96a-98a, 100a, 120a), which Arvel brought to a courthouse where Stoy was scheduled to appear for sentencing. Instead of giving the money to Stoy, as he was supposed to do, Arvel mistakenly delivered it to Elmer Byrd, a bondsman to whom Stoy was indebted (R. 98a-99a).

Arvel's testimony was corroborated by a number of witnesses. Among them was Stoy Decker, who

---

[1] "R." refers to petitioner's appendix, which is volume I of the record.

testified that on April 11, 1961, he called James R. Hoffa to ask for $1,000 which Stoy needed for legal fees (R. 79a-81a). After speaking to Hoffa, Stoy telephoned Marion Winstead, a Teamsters' official, and asked him to send someone to Chicago the following day to meet Allen Dorfman. Winstead indicated that he would do so (R. 83a-86a). Stoy, who had been arrested, asked Arvel to meet petitioner the next day to obtain money (R. 87a-89a). When Stoy met Arvel at the courthouse the next day, he asked Arvel whether he had the $1,000 (R. 89a).

Stoy testified further that, a year after these events, he mentioned to petitioner that he had been unable to use the $1,000 since a bondsman, Elmer Byrd, had received it. Petitioner replied "'I'll be darned,' or something of that nature" (R. 90a-92a). Elmer Byrd testified that on April 12 Arvel gave him an envelope at the courthouse containing $1,000 (128a-130a). A United States Marshal testified that he heard Arvel tell Stoy on April 12 that he had given $1,000 to a bondsman. Stoy replied that the bondsman was not supposed to have received the money (R. 171a-172a).

Plane tickets issued by Eastern Airlines in petitioner's name, and used on April 12, 1961, for travel from Louisville, Kentucky to Chicago, Illinois, and back, were introduced into evidence (Tr. 67-104, 269-275).[2] The government proved that a personal check for $1,000, payable to cash and signed by Allen Dorfman, was cashed at a Chicago bank on the morning of April 12, 1961, by someone personally known to the teller (R. 135a-145a).

---

[2] "Tr." refers to the transcript of the trial proceedings which has been filed with the Clerk of this Court.

Petitioner took the stand and admitted that he traveled to Chicago on April 12, 1961, at Arvel Decker's request, in order to obtain money from Allen Dorfman for Stoy Decker, and that he met Arvel Decker at a parking lot that afternoon. Petitioner claimed, however, that Dorfman was not at his office in Chicago, that he returned to Louisville without obtaining the money, and that he did not give money to Arvel. (R. 177a-181.)

ARGUMENT

1. Petitioner contends that he was entrapped into committing perjury because he was improperly compelled to answer the grand jury's questions over his assertion of the privilege against self-incrimination. The essence of entrapment, however, is that the government has induced the defendant to commit the crime; the government obviously did not induce petitioner to testify falsely when it successfully opposed his claim of privilege. Moreover, whether the district court correctly rejected that claim is immaterial to the question of petitioner's perjury. If petitioner wished to challenge the court's denial of his claim of privilege, the proper procedure would have been for him to refuse to answer, and then to appeal if he were held in contempt. Any alleged error in the order directing him to testify would not excuse petitioner for testifying falsely. *United States* v. *Williams*, 341 U.S. 58; *United States* v. *Remington*, 208 F.2d 567 (C.A. 2), certiorari denied, 343 U.S. 907; cf. *United States* v. *United Mine Workers*, 330 U.S. 258, 289-295.

Nor is there any merit in petitioner's suggestion that the government misled the court into compelling him to testify. In opposing the claim of privilege as to the question whether petitioner had turned $1,000 over to Arvel Decker in Louisville, government counsel stated (R. 250a-251a):

> The government has no information that this $1,000 is stolen money or that it is money illegally brought into the State of Kentucky. The government knows of no Federal violation that could have been committed by this particular witness in the set of circumstances of going to Chicago and coming back, nor would provide a chain or link in the chain of evidence.

Petitioner argues that this statement was misleading because the government failed to tell the court that the grand jury was "investigating the flow of money through the various * * * Teamsters organizations" and that Stoy Decker had testified before the grand jury that he asked Hoffa for the money (Pet. 5, 7-9). There is no indication, however, that the government was attempting to mislead or conceal anything from the court. The government was merely stating the reasons why it believed that the answer to the question could not incriminate petitioner.

2. Petitioner's attack upon the sufficiency of the evidence (Pet. 6, 7, 9, 10) is without merit. Apart from petitioner's own admissions on the stand, the following evidence adduced by the government cor-

roborated Arvel Decker's testimony that petitioner gave him $1,000 in Louisville on April 12, 1961:

(1) Stoy Decker's testimony that he asked Arvel to meet petitioner on April 12, 1961, to obtain $1,000 from petitioner.

(2) Elmer Byrd's testimony that he met Arvel Decker at the courthouse on the afternoon of April 12, 1961, and received $1,000 from him.

(3) Testimony by a United States Marshal that he heard Arvel Decker tell Stoy Decker on April 12 that he had given $1,000 to Byrd.

(4) Used plane tickets in petitioner's name for flights on April 12, 1961, from Louisville to Chicago and back.

(5) Proof that on the morning of April 12 a personal check written by Allen Dorfman for $1,000 was cashed at Dorfman's bank in Chicago.

3. Petitioner contends that reversible error was committed when the government (a) was allowed to cross-examine him as to whether he once submitted an altered motel receipt to his union, and (b) called the manager of the motel to testify that the amount shown on the receipt had been increased.

Whether petitioner had submitted a false statement to his union was relevant to his credibility as a witness. Moreover, when petitioner stated on direct examination that he had never been convicted of a crime or fired from a job (R. 179a), he put his character affirmatively in issue. Hence, it was within the discretion of the trial court to permit the government to inquire into petitioner's character by asking him

whether he had submitted an inflated expense voucher to his union.

During the government's cross-examination, petitioner's counsel made the following objection to use of the voucher (Pet. 28):

> "Well, it's not the best evidence, Your Honor, at this point. He's had enough time to check with the hotel. If he says someone has falsified an account here, he's had enough time to bring in the best evidence and have ——"

In response thereto, the government suspended its cross-examination of petitioner, and, without objection from the defense, presented the testimony of the motel manager that the receipt had been altered (R. 204a-209a). Having invited the government to produce the manager, petitioner cannot be heard to complain now about her testimony.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
DAVID N. ELLENHORN,
Attorneys.

JUNE 1964

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 734158 1037